

SOLICITOR**REPORT ON THE**

TO: Mail Stop 8
 Director of the U.S. Patent and Trademark Office
 P.O. Box 1450
 Alexandria, VA 22313-1450

SEP 16 2009 FILING OR DETERMINATION OF AN
 ACTION REGARDING A PATENT OR TRADEMARK
 U.S. PATENT & TRADEMARK OFFICE

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
 that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
06-CV-2433-DMS-CAB	10/23/2006	Southern District of California
PLAINTIFF	DEFENDANT	
American Calcar Inc.	American Honda Motor Co., Inc. Et al	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See complaint 13 <i>Two Pats. pp. 3-6</i>	6	11
2	7	12
3	8	13
4	9	14
5	10	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.		
1	6	11		
2	7	12		
3	8	13		
4	9	14		
5	10	15		

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
<i>Attached</i>		
CLERK	(BY) DEPUTY CLERK	DATE

W. Samuel Hamrick, Jr.

A. Garcia

9/11/09

Dated: December 14, 2005

Respectfully submitted,

Michael E. Jones, w/ permission,

Michael E. Jones *by Allen F. Gardner*
Texas State Bar No. 10929400
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*Attorneys for Plaintiff,
American Calcar, Inc.*

1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

4 AMERICAN CALCAR, INC.,

5 Plaintiff,

6 v.

7 AMERICAN HONDA MOTOR CO., INC.,
8 and HONDA OF AMERICA
9 MANUFACTURING, INC.,

10 Defendants.

Civil Action No.: 06-cv-2433-DMS (CAB)

11 **JUDGMENT**

12 **Judge Dana M. Sabraw**

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1 Pursuant to Rule 58 of the Federal Rules of Civil Procedure, the Court enters Final
2 Judgment, except for an accounting, as described herein.

3 WHEREAS Plaintiff American Calcar, Inc. ("ACI") filed a complaint against Defendants
4 American Honda Motor Co., Inc. ("AHMC") and Honda of America Manufacturing, Inc.
5 ("HAM") (collectively, "Honda") asserting infringement and willful infringement of U.S. Patent
6 Nos. 6,587,759; 6,459,961; 6,330,497; 6,438,465; 6,542,795; 6,009,355; 6,275,231; 6,577,928;
7 6,542,794; 6,975,932; 7,162,370; 6,148,261; 6,529,824; 6,754,485 and 6,987,964;

8 WHEREAS AHMC asserted counterclaims of non-infringement and invalidity as to each
9 ACI patent named in the complaint and asserted counterclaims of unenforceability as to U.S.
10 Patent Nos. 6,330,497; 6,438,465; 6,542,795; 6,009,355; 6,587,759; 6,459,961; 6,577,928 and
11 6,542,794.

12 For the reasons stated in my Orders and Memoranda issued in this action,

13 IT IS ORDERED AND ADJUDGED that judgment be and hereby is entered as follows:

14 1. Judgment is entered in favor of ACI and against Honda with respect to U.S.
15 Patent No. 6,587,759, which is adjudged infringed and not invalid. AHMC's counterclaim of
16 unenforceability directed to U.S. Patent No. 6,587,759 is dismissed with prejudice.

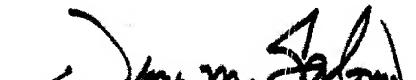
17 2. Judgment is entered in favor of Honda and against ACI with respect to U.S.
18 Patent Nos. 6,009,355; 6,275,231; 6,577,928; 6,542,794; 6,975,932; 7,162,370; 6,148,261;
19 6,529,824; 6,754,485 and 6,987,964, which are each adjudged not infringed. AHMC's
20 counterclaims of invalidity as to these patents have been dismissed without prejudice. AHMC's
21 counterclaims of unenforceability directed to U.S. Patent Nos. 6,009,355; 6,577,928 and
22 6,542,794 are dismissed without prejudice.

23 3. Judgment is entered in favor of Honda and against ACI with respect to U.S.
24 Patent Nos. 6,330,497, 6,438,465 and 6,542,795, which are each adjudged unenforceable due to
25 inequitable conduct. U.S. Patent No. 6,330,497 is further adjudged invalid. ACI's claim and
26 AHMC's counterclaim respecting infringement of U.S. Patent No. 6,330,497 are dismissed
27 without prejudice. ACI's claims and AHMC's counterclaims respecting validity and
28 infringement of U.S. Patent Nos. 6,438,465 and 6,542,795 are dismissed without prejudice.

1 4. ACI's willful infringement claim is dismissed with prejudice.
2 5. ACI's request for a permanent injunction has been denied.
3 6. ACI's claims and AHMC's counterclaims respecting U.S. Patent No. 6,459,961
4 are dismissed with prejudice.

5 Accordingly, this judgment is final except for an accounting within the meaning of
6 28 U.S.C. § 1292(c)(2). The Court will consider issues relating to damages and attorneys fees, if
7 appropriate, upon resolution of the appeal from this judgment. Accordingly, the Court denies as
8 moot Honda's motion for attorneys' fees (Docket No. 616) and ACI's motion for certification of
9 the inequitable conduct order for interlocutory appeal (Docket No. 617).

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12 Dated: August 5, 2009

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15 HON. DANA M. SABRAW
16 UNITED STATES DISTRICT COURT JUDGE
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SOLICITOR

TO: Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	Mail Stop 8 SEP 16 2009 U.S. PATENT & TRADEMARK OFFICE	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court **Northern District of California** on the following Patents or Trademarks:

DOCKET NO.	DATE FILED 9/2/2009	U.S. DISTRICT COURT Northern District of California
PLAINTIFF ZANE PUBLISHING, INC.	E-filing	DEFENDANT J.C. RESEARCH, INC. d/b/a FOGWARE PUBLISHING and INNOVATIVE KNOWLEDGE, INC.
		CV 09
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1,847,276	7/26/1994	Zane Publishing, Inc.
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SB4

4115

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

ORIGINAL
FILED
2009 SEP -4 P 2 15
RICHARD W. WIECKING, COURT
CLERK, U.S. DISTRICT OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA

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13 Attorneys for Plaintiff
14 ZANE PUBLISHING, INC.

E-filing

15
16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19
20 ZANE PUBLISHING, INC.,
a Texas corporation,

21 Plaintiff,
22 vs.

23 J.C. RESEARCH, INC., d/b/a
FOGWARE PUBLISHING
24 a California corporation, and
INNOVATIVE KNOWLEDGE, INC.,
25 a California corporation,

26
27 Defendants.

CIV. Action No. 09

4115

28 COMPLAINT AND DEMAND FOR JURY
TRIAL

COMPLAINT

1 Plaintiff Zane Publishing, Inc. ("Zane") for its complaint against J.C. Research, Inc.,
2 and Innovative Knowledge states as follows:

3

4 **I. PARTIES**

5 1. Zane is a corporation organized and operating under the laws of the State of
6 Texas with its principal place of business at 30 Rewi Street, Torbay, Auckland 1310, New Zealand.

7 2. J.C. Research is a California corporation having offices at 606 North First
8 Street, San Jose, California 95112.

9 3. Innovative Knowledge is a California corporation having offices at 606 North
10 First Street, San Jose, California 95112.

11 4. J.C. Research and Innovative Knowledge are collectively referred to as
12 Defendants.

13

14 **II. JURISDICTION**

15 5. The federal claims pleaded herein arise under 15 U.S.C. § 1051 et seq., and
16 17 U.S.C. § 101 et seq.

17 6. Original federal subject matter jurisdiction for the federal claims pleaded
18 herein is conferred upon the Court by 15 U.S.C. § 1121 (the Lanham Act), 17 U.S.C. § 501 (the
19 Copyright Act), 28 U.S.C. § 1331 (federal question) and 1338(a) (copyright).

20 7. Jurisdiction for the state law claims is conferred upon the Court by 28 U.S.C.
21 § 1338(b) ("substantial and related claim of unfair competition"), and 28 U.S.C. § 1367 ("other
22 claims that are so related to claims in the action within such original jurisdiction that they form part
23 of the same case or controversy under Article III of the United States Constitution").

24 8. This Court has general personal jurisdiction over the Defendants because
25 Defendants are conducting business in the State of California and this District, and wrongful acts
26 have occurred in this District.

1 **III. INTRADISTRICT ASSIGNMENT**

2 9. Pursuant to L.R. 3-2(c), this case being an Intellectual Property Action, it lies
3 in one of the excepted categories that shall be assigned on a district-wide basis.

5 **IV. BACKGROUND**

6 A. **Zane Development of Educational Software Titles**

7 10. Zane was incorporated in the early 1990s and was successor to ZCI, Inc.

8 11. Between 1995 and 2000 Zane grew into one of the leading educational
9 software publishers in the United States, developing and releasing in excess of 250 CD-ROM titles.
10 Their entire product range focused on supporting the K-12 education curriculum.

11 12. While most software publishers have always concentrated on providing
12 software titles for simply the math, reading and writing markets, Zane built itself a significant
13 reputation for providing a comprehensive range of CD-ROM titles for Art, Music, History, Science,
14 Biology, Literature, Geography, Social Sciences, Library Skills and Health.

15 13. To enable it to publish such a comprehensive range of titles, Zane accessed
16 content by entering into Licensing Agreements with several notable paper publishers. A portion of
17 that content was originally licensed to Zane through Clearvue. The content was normally in non-
18 digital format, which Zane converted into digital format.

19 14. Zane designed and developed the uniform design for a library of CD-ROM
20 titles. Zane developed a compact disc (CD) engine called "PowerCD" that formed the core of each
21 title. Zane also developed and built the soundtracks and the graphic interface on each CD-ROM. All
22 of the text, graphic and video files were then purposed, developed and structured individually to fit
23 the format and design requirements of Zane's PowerCD engine to produce the finished title.

24 15. Each Zane CD-ROM follows a standard design and presentation format so
25 as to enable it to be of value to students across a wide range of ages, as well as accommodating the
26 needs and requirements of students with reading disabilities and sight impairments. Hence the

1 student is either able to listen to the presentation via the audio tracks, or alternatively read the
2 contents on screen.

3 16. An interactive Quiz testing facility included with the titles was developed by
4 Zane and was operated as part of the PowerCD engine. Zane designed and participated in writing
5 over 22,000 questions and answers which were then digitally formatted, purposed to fit the PowerCD
6 engine, which provided each completed Zane title with its own interactive multiple choice testing
7 facility.

8 17. PowerCD is a trademark of Zane registered in the United States Patent and
9 Trademark Office, Registration No. 1,847,276 for "operating system software."

10 18. Zane Publishing and American Concise Encyclopedia are trademarks of Zane.

11 19. As a result of its activities, the copyright to numerous titles are registered with
12 the United States Copyright Office listing Zane as a joint owner.

13

14 **B. Clearvue Contracts**

15 20. To allow access and use of Clearvue content and to market the final titles,
16 Zane entered into a series of contracts with Clearvue. The contracts include a publishing and
17 licensing agreement dated May 11, 1994, as amended, a publishing and licensing agreement dated
18 September 22, 1995, as amended, and a PowerCD publishing/licensing and cost distribution
19 agreement dated June 18, 1998.

20 21. The contracts are directed toward the development and marketing of education
21 curriculum software titles. They provided, inter alia, for cross licenses, restrictions on the marketing
22 of the titles by the parties, the payment of royalties and joint ownership by Zane of the titles covered
23 by the agreements. The agreements provided Zane would have an exclusive license to distribute the
24 Zane software titles within the non-education market, whereas Clearvue would have exclusive rights
25 to distribution of the Zane titles in the formal education market, i.e. schools, universities and public
26 libraries.

1 C. Zane Bankruptcy

2 22. In 1998, due to market conditions impacted by the Internet, Zane went into
3 bankruptcy.

4 23. The Bankruptcy Court confirmed the assumption of the Clearvue executory
5 contracts by Zane, after approval by Clearvue.

6 24. Nicholas Tee, originally based in the United Kingdom and now in New
7 Zealand, became the controlling stockholder during a bankruptcy reorganization.

8 25. In May, 2000, Zane left bankruptcy.
9

10 D. J.C. Research, Fogware Publishing and Innovative Knowledge

11 26. After bankruptcy, Zane continued to market its titles, including use of
12 distributors such as J.C. Research. However, its activities selling CD titles lessened as it sought to
13 transition from the physical sale and delivery of CD-ROMs to an Internet delivered format.

14 27. Zane ended its distributorship relationship with J.C. Research in 2002.

15 28. Zane later became aware that J.C. Research was marketing the previously
16 licensed Zane titles and derivative copies of Zane titles outside the formal education market in
17 various ways, including through its division Fogware Publishing.

18 29. J.C. Research has also been marketing Zane titles and derivative copies of
19 Zane titles without permission of Zane that were not developed as part of Clearvue agreements.

20 30. Titles marketed by J. C. Research make reference to Zane and use Zane's
21 trademarks, without Zane's permission. The Zane Titles have also been marketed by Innovative
22 Research, a company located at the same address as J.C. Research.

23 31. J. C. Research has improperly overlaid the copyright notice of Zane by a
24 copyright notice falsely claiming copyright in Zane's titles by J. C. Research's division, Fogware
25 Publishing.

Upon information and belief, American Honda also has division, subsidiary and group companies and dealers with offices throughout the United States, including in Beaumont, Texas and Longview, Texas. Upon information and belief, in connection with the acts of infringement complained of herein, American Honda in person or through an agent is (a) transacting business within Texas and specifically within the Eastern District of Texas, (b) contracting to supply goods or services in Texas and specifically within the Eastern District of Texas, (c) committing tortious acts of patent infringement within Texas, and (i) regularly does or solicits business, or derives substantial revenue from goods used or consumed or services rendered in Texas and specifically within the Eastern District of Texas or (ii) expects or should reasonably expect its tortious acts of patent infringement to have consequences in Texas and specifically within the Eastern District of Texas and derives substantial revenue from interstate or international commerce.

4. Upon information and belief, defendant Honda Manufacturing is an Ohio corporation having a principal place of business at 24000 Honda Pkwy, Marysville, OH 43040. Upon information and belief, defendant Honda Manufacturing is a wholly-owned subsidiary of defendant American Honda. Upon information and belief, in connection with the acts of infringement complained of herein, Honda Manufacturing in person or through an agent is (a) transacting business within Texas and specifically within the Eastern District of Texas, (b) contracting to supply goods or services in Texas and specifically within the Eastern District of Texas, (c) committing tortious acts of patent infringement within Texas and specifically within the Eastern District of Texas, and (i) regularly does or solicits business, or derives substantial revenue from goods used or consumed or services rendered in Texas and specifically within the Eastern District of Texas or (ii) expects or should reasonably expect its tortious acts of patent infringement to have consequences in Texas and specifically within the Eastern District of Texas and derives substantial revenue from interstate or international commerce.

COUNT ONE

COPYRIGHT INFRINGEMENT (17 U.S.C. § 101 et seq.)

32. The allegations of paragraphs 1-31 are incorporated herein by reference.

33. Zane is the owner and/or exclusive licensee of certain United States copyrights for its software titles, which are listed in Exhibit A. Registration of these copyrights has been sought with the United States Copyright Office. Where known, the registration numbers are also listed on Exhibit A.

34. Defendants have copied and created derivative works from Zane's copyrighted works, without Zane's authorization. Such acts infringe Zane's exclusive rights granted by 17 U.S.C. § 106.

35. Zane titles known to have been copied or from which derivative works were made are indicated on Exhibit A.

36. Defendants have distributed copies of Zane's copyrighted works, without Zane's authorization. Such acts infringe Zane's exclusive rights granted by 17 U.S.C. § 106.

37. Defendants' infringement has damaged Zane and adversely affected the market for and value of Zane's copyrighted works.

38. Defendants' committed each act of infringement with the knowledge that the works were subject to copyright and with knowledge that Defendants' were not authorized to copy or create derivative works of such copyrighted works.

39. Defendants' acts of infringement were willful within the meaning of 17 U.S.C. § 504(c)(2).

40. For Defendants' acts of infringement, Zane is entitled to recover Zane's actual damages and any profits of Defendants not taken into account in computing the actual damages or, at its election, statutory damages, including for willful infringement damages in the amount of \$150,000 per copyrighted work infringed.

1 41. Monetary relief alone is not adequate to address fully the irreparable injury
2 that Defendant's illegal actions have caused and will continue to cause Zane if not enjoined. Zane
3 therefore is also entitled to preliminary and permanent injunctive relief to stop Defendants' ongoing
4 infringement of Zane's copyrighted works.

5

6

COUNT TWO

FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(a))

7 42. The allegations of paragraphs 1-41 are incorporated herein by reference.

8 43. Defendants' acts are likely to cause confusion, or to cause mistake, or to
9 deceive as to the affiliation, connection, or association of Defendants with Zane.

10 44. Defendants' acts are likely to cause confusion, or to cause mistake, or to
11 deceive as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial
12 activities by Zane.

13 45. Zane has been damaged and Defendants have derived profits from the
14 aforementioned unfair competition.

15 46. Defendants' conduct in offering non-authorized copies of software developed
16 from Zane titles and use of Zane trademarks with such non-authorized copies in interstate commerce
17 constitutes unfair competition proscribed by section 43(a) of the Lanham Act, codified at 15 U.S.C.
18 § 1125. By reason of the foregoing acts, Defendants' have unfairly competed with Zane in violation
19 of federal law.

20 47. Defendants are liable to Zane for such violations of 15 U.S.C. § 1125(a).

21 48. By reason of Defendants' actions, Zane has suffered and will continue to
22 suffer damage to its business, reputation, and good will, and loss of sales and profits Zane would
23 realize but for Defendants' acts.

24 49. Monetary relief is not adequate to address fully the irreparable injury that
25 Defendant's illegal actions have caused and will continue to cause Zane if not enjoined. Zane is
26 entitled to preliminary and permanent injunctive relief to stop Defendants' unfair competition.

COUNT THREE

FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

50. The allegations of paragraphs 1-49 are incorporated herein by reference.

51. Defendants have, without the consent of Zane, used and continues to use in commerce, a colorable imitation of Zane's PowerCD® trademark in connection with the sale, offering for sale, distribution, and advertising of the Defendants' products.

52. Defendants' actions constitute willful infringement of Zane's exclusive rights in the PowerCD® trademark in violation of 15 U.S.C. § 1114.

53. Defendants' use of PowerCD, that is confusingly similar and/or a colorable imitation of Zane' PowerCD™ trademark, has been and continues to be done with the intent to cause confusion, mistake, and to deceive customers concerning the source and/or sponsorship of Defendants' products.

54. As a direct and proximate result of Defendants' conduct, Zane has suffered irreparable harm to the valuable PowerCD® trademark and its reputation in the industry. Unless Defendants are restrained from further infringement of the PowerCD® trademark, Zane will continue to be irreparably harmed.

55. Zane has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if Defendants' acts are allowed to continue.

56. As a direct and proximate result of Defendants' conduct, Zane has suffered damages to the valuable PowerCD® trademark, and other damages in an amount to be proved at trial.

COUNT FOUR
COMMON LAW UNFAIR COMPETITION

57. The allegations of paragraphs 1-56 are incorporated herein by reference.

58. Defendants' actions, including use of Zane's trademarks, Zane, PowerCD and American Concise Encyclopedia, constitute unfair competition, including trademark infringement, under common law. As a direct and proximate result of Defendants' infringing conduct, Zane has suffered and will continue to suffer lost sales and profits.

59. Zane has suffered and continues to suffer injury to its business reputation and goodwill for which no adequate remedy exists at law and for which Zane is entitled to injunctive relief.

DEMAND FOR RELIEF

WHEREFORE, Zane demands entry of a judgment that:

- A. Defendants' infringed Zane's copyrights under 17 U.S.C. § 501;
- B. Defendants are liable to Zane for unfair competition under the Lanham Act

on law:

and the common law;

- C. Defendants are liable to Zane for federal trademark infringement;
- D. Defendants' conduct has been willful and deliberate, including federal and common law unfair competition, trademark infringement and copyright infringement;
- E. Defendants be required to account to Zane for any and all profits derived by them, royalties due and all damages sustained by Zane;

F. Defendants be ordered to pay over to Zane all damages which Zane has sustained as a consequence of Defendants' actions and all royalties due and that Zane be awarded Defendants' profits derived by reason of said acts;

G. Zane be awarded an assessment of exemplary damages and punitive damages against Defendants, together with an award of such exemplary damages and punitive damages;

H Treble damages be awarded due to Defendants' willful and deliberate actionable conduct;

¹ This case is “exceptional” in the sense of 15 U.S.C. § 1117(a).

J. Zane be awarded its attorney fees and prejudgment interest;

K. Enjoining Defendants, their agents, servants, employees, successors, licensees, subsidiaries, transferees, representatives, and assignees, and all those in active concert or participation with them, from:

i. Imitating, copying or making unauthorized use of trademarks or copyrights;

ii. Manufacturing, producing, distributing, or displaying any product bearing any simulation, reproduction, counterfeit, copy or colorable imitation of trademarks or copyrights;

iii. Doing or allowing any act or thing calculated or likely to cause confusion or mistake in the minds of members of the public or the trade, or prospective purchasers of Plaintiff's products, or likely to deceive members of the public or the trade, or prospective purchasers, into believing that there is some association between Zane and the Defendants' products;

iv. Further infringing Plaintiff's exclusive rights in Zane's trademarks and copyrights or otherwise competing unfairly with Plaintiff;

L. Enter an order, pursuant to 17 U.S.C. § 503(a), impounding all of Defendants' products that infringe Zane's copyrights, as well as any plates, molds, matrices, programs, or other articles by means of which copies of the works embodies in Zane's copyrights may be produced;

M. Defendants deliver for destruction all products, labels, signs, prints, packages, wrappers, and advertisements in the possession of Defendants, bearing Zane's trademarks, or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed, pursuant to 15 U.S.C. § 1118; and

N. Such other, different, and additional relief be granted as the Court deems equitable and proper.

DEMAND FOR JURY TRIAL

Zane hereby demands trial by jury for all issues so triable.

Respectfully submitted,

By:

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Fax: (248) 358-3351

Attnorneys for Plaintiff
ZANE PUBLISHING, INC.

Date: 09-03-09

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U.S. DISTRICT COURT05 DEC 14 PM 3:55
TEXAS-EASTERN

BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

American Calcar, Inc.,) Civil Action No.: 6:05cv475
Plaintiff,)
v.) JURY
1. American Honda Motor Co., Inc.)
and)
2. Honda of America Manufacturing, Inc.,)
Defendants.)

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff American Calcar, Inc. ("ACI"), for its original complaint of patent infringement against American Honda Motor Co., Inc. ("American Honda") and Honda of America Manufacturing, Inc. ("Honda Manufacturing") alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement under the laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on Sections 1331, 1338(a), 1391(b), 1391(c), and 1400(b) of Title 28, United States Code.

PARTIES

2. Plaintiff ACI is a Delaware corporation with its principal place of business at 1001 Avenida Pico, Suite C-139, San Clemente, CA 92673.

3. Upon information and belief, defendant American Honda is a California corporation having a principal place of business at 1919 Torrance Blvd., Torrance, CA 90501.

THE PATENTS IN SUIT

5. United States Patent No. 6,438,465 ("the '465 patent"), entitled "Technique for effectively searching for information in a vehicle," duly and legally assigned to ACI, issued on August 20, 2002 based upon an application filed on February 23, 2001 by Michael L. Obradovich, Michael L. Kent, and John Dinkel. ACI is the owner of title to the '465 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '465 patent is attached hereto as Exhibit A.

6. United States Patent No. 6,542,795 ("the '795 patent"), entitled "Technique for providing information and control responsive to a request in a vehicle," duly and legally assigned to ACI, issued on April 1, 2003 based upon an application filed on June 20, 2002 by Michael L. Obradovich, Michael L. Kent, and John Dinkel. ACI is the owner of title to the '795 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '795 patent is attached hereto as Exhibit B.

7. United States Patent No. 6,275,231 ("the '231 patent"), entitled "Centralized control and management system for automobiles," duly and legally assigned to ACI, issued on August 14, 2001 based upon an application filed on August 1, 1997 by Michael L. Obradovich. ACI is the owner of title to the '231 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '231 patent is attached hereto as Exhibit C.

8. United States Patent No. 6,148,261 ("the '261 patent"), entitled "Personal communication system to send and receive voice data positioning information," duly and legally assigned to ACI, issued on November 14, 2000 based upon an application filed on June 20, 1997 by Michael L. Obradovich, John Dinkel and Michael L. Kent. ACI is the owner of title to the '261 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '261 patent is attached hereto as Exhibit D.

9. United States Patent No. 6,577,928 ("the '928 patent"), entitled "Technique for effectively providing information regarding service of a vehicle," duly and legally assigned to ACI, issued on June 10, 2003 based upon an application filed on May 3, 2001 by Michael L. Obradovich. ACI is the owner of title to the '928 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '928 patent is attached hereto as Exhibit E.

10. United States Patent No. 6,542,794 ("the '794 patent"), entitled "Technique for effectively communicating information concerning vehicle service providers to a user," duly and legally assigned to ACI, issued on April 1, 2003 based upon an application filed on January 2, 2002 by Michael L. Obradovich. ACI is the owner of title to the '794 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '794 patent is attached hereto as Exhibit F.

11. United States Patent No. 6,459,961 ("the '961 patent"), entitled "Technique for providing information upon a notable condition in a vehicle," duly and legally assigned to ACI, issued on October 1, 2002 based upon an application filed on November 21, 2000 by Michael L. Obradovich, Michael L. Kent and John Dinkel. ACI is the owner of title to the '961 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '961 patent is attached hereto as Exhibit G.

12. United States Patent No. 6,587,759 ("the '759 patent"), entitled "Technique for effectively providing information responsive to a notable condition in a vehicle," duly and legally assigned to ACI, issued on July 1, 2003 based upon an application filed on July 30, 2002 by Michael L. Obradovich, Michael L. Kent and John Dinkel. ACI is the owner of title to the '759 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '759 patent is attached hereto as Exhibit H.

13. United States Patent No. 6,754,485 ("the '485 patent"), entitled "Technique for effectively providing maintenance and information to vehicles," duly and legally assigned to ACI, issued on June 22, 2004 based upon an application filed on August 23, 2000 by Michael L. Obradovich and Philip E. White. ACI is the owner of title to the '485 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '485 patent is attached hereto as Exhibit I.

14. United States Patent No. 6,330,497 ("the '497 patent"), entitled "Multimedia technique for operating devices in a vehicle," duly and legally assigned to ACI, issued on December 11, 2001 based upon an application filed on November 21, 2000 by Michael L. Obradovich, Michael L. Kent and John Dinkel. ACI is the owner of title to the '497 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '497 patent is attached hereto as Exhibit J.

15. United States Patent No. 6,009,355 ("the '355 patent"), entitled "Multimedia information and control system for automobiles," duly and legally assigned to ACI, issued on December 28, 1999 based upon an application filed on January 28, 1997 by Michael L. Obradovich, Michael L. Kent and John Dinkel. ACI is the owner of title to the '355 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '355 patent is attached hereto as Exhibit K.

16. United States Patent No. 6,529,824 ("the '824 patent"), entitled "Personal communication system for communicating voice data positioning information," duly and legally assigned to ACI, issued on March 4, 2003 based upon an application filed on September 25, 2000 by Michael L. Obradovich, John Dinkel and Michael L. Kent. ACI is the owner of title to the '824 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '824 patent is attached hereto as Exhibit L.

17. United States Patent No. 6,975,932 ("the '932 patent"), entitled "Technique for maintaining a separation between a vehicle and a detectable object," duly and legally assigned to ACI, issued on December 13, 2005 based upon an application filed on September 18, 2003 by Michael L. Obradovich. ACI is the owner of title to the '932 patent and it possesses all rights of recovery thereunder. A true and correct copy of the '932 patent is attached hereto as Exhibit M.

CLAIMS FOR PATENT INFRINGEMENT AGAINST AMERICAN HONDA

18. Upon information and belief, defendant American Honda has infringed and is continuing to infringe one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, in violation of one or more subsections of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States vehicles implementing the inventions claimed in one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents and/or by actively inducing infringement of or contributing to the infringement of one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents.

19. Notice of ACI's patents has been given to defendant American Honda.

20. Upon information and belief, the infringement by defendant American Honda has been, and continues to be, willful and deliberate.

21. As a result of American Honda's infringement of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, ACI has suffered monetary damages in an amount to be determined at trial, and will continue to suffer damages in the future unless American Honda's infringing activities are enjoined.

22. Unless a permanent injunction is issued enjoining American Honda and its agents, servants, employees, representatives, attorneys, affiliates and all others acting on their

behalf from infringing the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, ACI will continue to be greatly and irreparably harmed.

CLAIMS FOR PATENT INFRINGEMENT AGAINST HONDA MANUFACTURING

23. Upon information and belief, defendant Honda Manufacturing has infringed and is continuing to infringe one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, in violation of one or more subsections of 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States vehicles implementing the inventions claimed in one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents and/or by actively inducing infringement of or contributing to the infringement of one or more claims of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents.

24. Notice of ACI's patents has been given to defendant Honda Manufacturing by and through its parent company American Honda.

25. Upon information and belief, the infringement by defendant Honda Manufacturing has been, and continues to be, willful and deliberate.

26. As a result of Honda Manufacturing's infringement of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, ACI has suffered monetary damages in an amount to be determined at trial, and will continue to suffer damages in the future unless Honda Manufacturing's infringing activities are enjoined.

27. Unless a permanent injunction is issued enjoining Honda Manufacturing and its agents, servants, employees, representatives, attorneys, affiliates and all others acting on their behalf from infringing the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, ACI will continue to be greatly and irreparably harmed.

DEMAND FOR JURY TRIAL

28. ACI respectfully demands a jury trial on all issues triable thereby.

PRAYER

WHEREFORE, plaintiff American Calcar, Inc. prays for judgment and relief against defendants American Honda and Honda Manufacturing, including:

- A. Adjudging each of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents to be valid and to be enforceable;
- B. Adjudging that defendants have infringed and induced infringement of said patents;
- C. Permanently enjoining defendants and their respective officers, agents, servants, employees, attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of injunction, including distributors and customers, from continuing acts of infringement of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents pursuant to 35 U.S.C. § 283;
- D. Adjudging that an accounting be had for damages caused by the defendants' infringement of the '465, '795, '231, '261, '928, '794, '961, '759, '485, '497, '355, '824 and '932 patents, and supplemental damages for any continuing post-verdict infringement up until the entry of the Final Judgment, together with pre-judgment and post-judgment interest on the damages awarded;
- E. Adjudging that defendants are willful infringers and trebling the aforesaid damages pursuant to 35 U.S.C. § 284;
- F. Adjudging that this case is an exceptional case and awarding ACl its costs (including all disbursements), expenses, and reasonable attorney's fees pursuant to 35 U.S.C. § 285; and
- G. Such other and further relief as this Court may deem just and proper.